APPENDIX A

[SEAL]

IN THE SUPREME COURT OF ALABAMA

May 14, 2004

1020026

CAREMARK RX, INC. f/k/a MEDPARTNERS, INC.

v.

J. BROOKE JOHNSTON

(Appeal from Jefferson Circuit Court: CV-98-4984).

CERTIFICATE OF JUDMENT

The appeal in this cause having been duly submitted, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the court is affirmed.

IT IS FURTHER ORDERED that the cost of appeal be taxed against the appellant as provided by Rule 35, Alabama Rules of Appellate Procedure.

NO OPINION

JOHNSTONE, J.–HOUSTON. *See*, LYONS, and WOODALL, JJ., concur.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record of said Court.

Witness my hand this 24th Day of August 2004

/s/ Robert G. Esdale
ROBERT G. ESDALE
Clerk, Supreme Court of Alabama

STATE OF ALABAMA—JUDICIAL DEPARTMENT
THE SUPREME COURT
OCTOBER TERM, 2003-2004

[Filed May 14, 2004]

1020026

CAREMARK RX, INC. f/k/a MEDPARTNERS, INC.,

v.

J. BROOKE JOHNSTON.

Appeal from Jefferson Circuit Court, CV-98-4984.

JOHNSTONE, *Justice*.

AFFIRMED. NO OPINION

See Rule 53(a)(1) and (a)(2)(B) and (f), Ala. R. App. P. HOUSTON, *See*, LYONS, and WOODALL, JJ., concur.

APPENDIX B

IN THE SUPREME COURT OF ALABAMA

[SEAL]

August 13, 2004

1020026

CAREMARK RX, INC. f/k/a MEDPARTNERS, INC.,

v.

J. BROOKE JOHNSTON.

(Appeal from Jefferson Circuit Court: CV-98-4984)

ORDER

IT IS ORDERED that the application for rehearing filed in this cause is overruled.

Application for Rehearing Overruled. No Opinion.

JOHNSTONE, J.–HOUSTON. *See*, LYONS, and WOODALL, JJ., concur.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record of said Court.

Witness my hand this 13th. Day of August 2004

/s/ Robert G. Esdale-
ROBERT G. ESDALE
Clerk, Supreme Court of Alabama

APPENDIX C

[SEAL]

IN THE SUPREME COURT OF ALABAMA

August 31, 2004

1020026

CAREMARK RX, INC. f/k/a MEDPARTNERS, INC.

v.

J. BROOKE JOHNSTON.

(Appeal from Jefferson Circuit Court: CV-98-4984)

NOTICE

Emergency motion for stay of execution of Caremark RX, Inc. is denied.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record of said Court.

Witness my hand this 24th. Day of August 2004.

/s/ Robert G. Esdale
ROBERT G. ESDALE
Clerk, Supreme Court of Alabama

APPENDIX D

IN THE SUPREME COURT OF ALABAMA

[Filed Aug. 31, 2004]

Case No: 1020026

CAREMARK RX, INC. (formerly MEDPARTNERS, INC.),
Appellant,

vs.

J. BROOKE JOHNSTON, JR.,
Appellee.

On Appeal from The Circuit Court of Jefferson County,
Case No. CV 98-4984

EMERGENCY MOTION FOR STAY OF EXECUTION
OF CAREMARK RX, INC.

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IN THE SUPREME COURT OF ALABAMA

CAREMARK RX, INC. (formerly MedPartners, Inc.),
Appellant,

vs.

J. BROOKE JOHNSTON, JR.,
Appellee.

On Appeal from The Circuit Court of Jefferson County,
Case No. CV 98-4984

EMERGENCY MOTION FOR STAY OF EXECUTION

COMES NOW Caremark RX, Inc. and moves the Court to stay execution of the $1 million compensatory award and the $1 million punitive award entered by the trial court on the .fraud claim of J. Brooke Johnston, Jr. pending the filing and disposition of a petition for writ of certiorari to the United States Supreme Court. Caremark RX, Inc. intends to file with United States Supreme Court Justice Kennedy a motion to stay the judgment of the Alabama Supreme Court with respect to the fraud claim pending resolution of the petition for writ of certiorari that Caremark RX, Inc. will file with the United States Supreme Court. Caremark RX, Inc. is prepared to and will pay the portion of the trial court's judgment relating to J. Brooke Johnston, Jr.'s claim for breach of contract.

WHEREFORE, PREMISES CONSIDERED, Appellant, Caremark RX, Inc., respectfully requests this Court to stay execution of the aforementioned judgment.

/s/ Deborah Alley Smith
THOMAS W. CHRISTIAN
DEBORAH ALLEY SMITH
SHARON D. STUART
Attorneys for Appellant
CAREMARK RX, INC.

Of Counsel:

CHRISTIAN & SMALL LLP
1800 Financial Center
505 North 20th Street
Birmingham, AL 35203-2696
205/795-6588

CERTIFICATE OF SERVICE,

TO: The Clerk of the Supreme Court of Alabama

Case No. 1020026

CAREMARK RX, INC. (FORMERLY MEDPARTNERS, INC.),
Appellant,

vs.

J. BROOKE JOHNSTON
Appellee.

I certify that I have this date served a copy of the foregoing Emergency Motion for Stay of Execution on counsel of record for all parties to this appeal by placing a copy of same in the United States mail, first class postage prepaid and addressed as follows:

Counsel for Appellee:

JOHN W HALEY
RALPH D. COOK
BRUCE J. MCKEE
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2025 3rd Avenue North, Suite 800
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11 Oak Street
Birmingham, AL 35213
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Dated this the 31st day of August, 2004

/s/ [ILLEGIBLE]
Counsel for Appellant

APPENDIX E

IN THE CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA

[Filed August 19, 2002]

CASE NO.CV 98-4984

CAREMARK RX, INC. (formerly MEDPARTNERS, INC.),
Plaintiffs,

vs.

J. BROOKE JOHNSTON, JR.,
Defendant.

ORDER

THIS CAUSE is considered upon motions by the Plaintiff/counter-Defendant, Caremark Rx., Inc, (formerly, MedPartners, Inc,] ("Caremark"), for judgment as a meter of law or, in the alternative for a new trial or remittitur. The Motions were argued and submitted with briefs on May 16, 2002. By stipulation the parties agreed, in writing, to extend the period for the Court to rule on rheas post trial motions to August 20, 2002. This action is the result of a dispute between the Defendant/Counter-Plaintiff ("Johnston") who was the former General Counsel of MedPartners and Caremark. In January 1998, there was a substantial shake-up at Caremark which was than MedPartners, Inc., that resulted in the removal of Larry House as CEO of the company, As a result of this "change of control" certain corporate officers, including Johnston, sought to terminate their employment and enforce the provisions of alleged employment contracts with the company. Caremark filed a declaratory judgment action to

determine the validity of these employment contracts. In response Johnston filed counterclaims alleging breach of contract and fraud. Caremark then amended its original complaint to add a myriad of claims, including breach of contract, breach of fiduciary duties, fraud, negligence, and conspiracy. This action was vigorously contested in extensive pretrial motions, multiple mediations and finally in a lengthy jury trial involving numerous and impressive witnesses for bath sides. At the end of the day, however, the jury rejected Caremark's claims and found in favor of Johnston on his breach of contact and fraud claims. The jury, in response to interrogatories, held that Johnston's employment agreement was valid and awarded the sum of One Million Eight Hundred Sixty Thousand and 00/100 Dollars ($1,860,000.00) as compensatory damages for the breach thereof, In addition, the jury awarded Johnston One Million and 00/100 Dollars ($1,000,000.00) as compensatory damages on his fraud claim and an additional One Million and 00/100 Dollars ($1,000,000.00) as punitive damages resulting in a total award of Three Million Eight Hundred sixty Thousand 00/000 Dollars ($3,860,000.000), By agreement of the parties the Court calculated the interest due on the contract claim and determined the interest due thereon was in the sum of Four Hundred Two Thousand Six Hundred Seventy-two and 75/100 Dollars ($402,672,75), Accordingly, a judgment was entered in favor of Johnston in the sum of Four Million Two Hundred Sixty-two Thousand Six Hundred Seventy-two and 75/ 100 !Dollars ($4,262,672.75). Caremark argues that these awards were not supported by substantial evidence and, therefore should be either reduced or set aside entirely.

In support of his breach of contract claim Johnston submitted evidence of benefits due as severance compensation under the contract in the approximate amount of Two Million and 00/100 Dollars ($200,000.00). This amount was essentially the same amount calculated by Caremark's financial officer, Charles Wingard. The evidence further

indicated that Johnston had received a retention bonus of One Hundred Forty Thousand and 00/100 Dollars ($140,000.00), provided that he remain with the company for one year from the date of said bonus. Johnston terminated his employment in less than a year and therefore his bonus was due to be refunded. Thus, the award of One Million Eight Hundred Sixty Thousand Dollars ($1,860,000,00) as compensatory damages on the breach of contract claim was supported by the evidence submitted in this cause.

Johnston further submitted evidence that in January 1998, the acting CEO, Richard Scrushy, represented to him that if Johnston would remain with the company during the period of the corporate realignment that his employment agreement would be honored in the event that he subsequently terminated his employment Johnston testified that in reliance upon this representation he continued his employment with Caremark and relinquished an opportunity to return to his previous law firm as planned. Johnston testified that Scrushy's representation, whether innocently, deliberately or recklessly, was false and as a result he sustained damages. He testified that at the time he left his employment with Caremark he had lost his opportunity to return to his old firm and that he was forced to begin a new law practice which would take five years to build to the point that he was earning compensation that was equal to the compensation he was earning at Caremark and which he would earn at his old firm of approximately Two Hundred Thousand Dollars ($200,000.00) per year, The jury, therefore could believe that Johnston sustained compensatory damages in the sum of One Million Dollars ($1,000,000.00) as a result of the mis-representation.

Finally, the jury in its discretion awarded Johnston the sum of One Million Dollars ($1,000,000.00) as punitive damages, Caremark strenuously argues that this award was unsupported by the evidence and should be substantially reduced or

entirely remitted, The Court has considered the guidepost required in a *Hammond-Green* tail review. The award is well within the acceptable ratio of punitive damages to actual or likely harm and the cost of litigation is still pending before the Court for determination, therefore these guideposts are met. The other guideposts of (1) sanctions for comparable misconduct; (2) removing the Defendant's profit; (3) criminal sanctions; and (4) other civil actions against the same Defendant are not applicable in this action. Nor is the financial position of the Defendant since the Defendant has conceded that the punitive damage award would not substantially impact its financial position. Therefore, the degree of reprehensibility of the conduct of the Defendant is the only guidepost that may be relevant. Johnston submitted evidence that Mr. Scrushy's representation regarding his continued employment under the alleged employment agreement was either innocent, deliberate or reckless. Scrushy denies even making the alleged representation. This clearly presents a question of fact for the jury. In viewing the evidence the Court ends that the reprehensibility of the conduct of the Defendant in this action is low, however, the evidence could substantiate the punitive damage award if the jury believed that the representations were either reckless or deliberate and subsequently, Caremark made a deliberate decision to repudiate the contracts regardless of the prior representations of Mr. Scrushy.

Caremark specifically moved the Court to reduce the punitive award to Two Hundred Fifty Thousand Dollars ($250,000.00), which is the statutory cap provided in § 6 11-21, Alabama Cody. In *Henderson v. Alabama Power Company*, 627 So.2d 879, our Supreme Court specifically held this statute to be unconstitutional; therefore, this Court declines to grant Caremark's motion for reduction of the award.

In addition, the Court reviewed and considered all of the grounds submitted by Caremark and finds that these grounds are not sufficient to require the Court to overturn the verdict of the jury, Accordingly, the Court finds that there is amble and sufficient evidence to support the jury verdict rendered in this cause and therefore, the Motions for Judgment as a Matter of' Law, Motion for a New Trial and Motion for Remittitur by Caremark is OVERRULED.

DONE and ORDERED this the 18th day of August, 2002.

/s/ G. William Noble
G. WILLIAM NOBLE
CIRCUIT JUDGE

GWN/cs
cc: All parties.

APPENDIX F

IN THE CIRCUIT COURT OF
JEFFERSON COUNTY ALABAMA

[Filed Feb. 21, 2002]

CASE NO. CV 98-4984

CAREMARK RX, INC. (formerly MEDPARTNERS, INC.)
Plaintiff,

vs.

J. BROOKE JOHNSTON, JR.,
Defendant.

AMENDED FINAL ORDER

THIS CAUSE came on for trial on January 29, 2002. This action was commenced by MedPartners, Inc. which, subsequent to the filing of its Complaint, changed its name to Caremark Rx, Inc. These two names are used interchangeably and are one and the same party. The Defendant/Counter-Plaintiff is J. Brooke Johnston, Jr.

At the conclusion, of the Plaintiff's evidence and at the conclusion of all of the evidence, both the Plaintiff and Defendant moved for a judgment as a matter of law. The motions of both parties were granted in part, with only the following claims remaining viable: 1) Johnston's claim of fraud, 2) Johnston's claim of breach of contract, 3) Caremark Rx Inc.'s claims of fraud and negligence relating to SEC filings, press releases, and due diligence, 4) Caremark Rx Inc.'s claims of fraud and negligence as to the Talbert

acquisition and 5) Caremark Rx Inc.'s claims of breach of contract.

Prior to the submission of this cause to the Jury both parties filed written requests for instructions, which requests were either incorporated in the Court's oral charge or denied.

The Jury commenced its deliberation on February 12, 2002, and returned the following verdicts and interrogatories on February 13, 2002, which are attached hereto as Exhibit "A" and are incorporated herein.

Pursuant to the jury verdicts in this matter, a judgment is entered on the claims of Caremark Rx, Inc. in favor of J. Brooke Johnston, Jr. and against Caremark Rx, Inc., formerly known as MedPartners, Inc.

The parties agreed prior to the submission of this cause to the jury that, if applicable, the Court would calculate interest due on the contract claims. The jury having found in favor of the Counter-Plaintiff, J. Brooke Johnston, Jr., on his contract claim the Court finds that interest should be calculated from July 7, 1998, until February 13, 2002, at the rate of six (6%) percent per annum, which sum is Four Hundred Two Thousand Six Hundred Seventy-two and 75/100 Dollars ($402,672.75).

Accordingly, judgment is entered on the counter-claims of J. Brooke Johnston, Jr. in favor of the Defendant/Counter-Plaintiff J. Brooke Johnston, Jr., and against the Plaintiff/Counter-Defendant, Caremark Rx, Inc., formerly known as MedPartner's Inc., in the sum of Three Million Eight Hundred Sixty Thousand and 00/100 Dollars ($3,860,000.00) plus interest in the amount of Four Hundred Two Thousand Six Hundred Seventy-two and 75/100 Dollars ($402,672.75), for a total of Four Million Two Hundred Sixty-Two Thousand Six Hundred Seventy-two and 75/100 Dollars ($4,262,672.75).

The Court finds that there is no just reason for delay in entry of partial final judgment and expressly directs the entry of partial final judgment pursuant to Rule 54(b) of the *Alabama* Rules of *Civil Procedure*.

Costs are taxed to the Plaintiff, Caremark Rx, Inc.

DONE and ORDERED this the 21st day of February, 2002.

/s/ G. William Noble
G. WILLIAM NOBLE
CIRCUIT JUDGE

GWN/cs
cc: All parties.

APPENDIX G

IN THE CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA

[Filed February 13, 2002]

CASE NO: CV 98-4984

MEDPARTNERS, INC.,

Plaintiffs,

vs.

J.BROOKE JOHNSTON,

Defendant.

COUNTERCLAIMS BY JOHNSTON AGAINST MEDPARTNERS VERDICT IN FAVOR OF JOHNSTON

On the counterclaims by J. Brooke Johnston against MedPartners, we, the Jury, find in favor of J. Brooke Johnston and against MedPartners as follows:

1. For breach of the Employment Agreement, we assess Johnston's damages at one million eight hundred sixty thousand dollars ($1,860,000).

2. For fraud, we assess Johnston's damages as follows:

   Compensatory damages: one million dollars ($1,000,000).

   Punitive damages: one million dollars ($1,000,000).

It is our intention to assess total damages to the Plaintiff at: Three million eight hundred sixty thousand dollars ($3,860,000).

/s/ Michael C. Pruitt
FOREPERSON

Fill in blank spaces both in words and figures the amount arrived at by you.

IN THE CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA

[Filed February 13, 2002]

CASE NO. CV 98-4984

MEDPARTNERS, INC.,

Plaintiffs,

vs.

J. BROOKE JOHNSTON,

Defendant.

INTERROGATORIES TO THE JURY

1. Is the Employment Agreement between MedPartners and Johnston valid?

YES X NO ___

2. Did Johnston breach the Employment Agreement?

YES ___ NO X

3. What amount of damage, if any, did Johnston's breach of the Employment Agreement cause to MedPartners?

_____ Dollars

($0)

(*fill in the amount in words and figures*)

4. Did MedPartners breach the Employment Agreement?

YES X NO ___

5. What amount of damage, if any, did MedPartners' breach of the Employment Agreement cause to Johnston?

One million eight hundred sixty thousand Dollars ($1,860,000)

(*fill in the amount in words and figures*)

/s/ Michael C. Pruitt
FOREPERSON

IN THE CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA

[Filed February 13, 2002]

CASE NO. CV 98-4984

MEDPARTNERS, INC.,

Plaintiffs,

vs.

J. BROOKE JOHNSTON,

Defendant.

CLAIMS BY MEDPARTNERS AGAINST JOHNSTON—
VERDICT IN FAVOR OF JOHNSTON

"On the claims by MedPartners against J. Brooke Joohnston, we, the jury, find in favor of J. Brooke Johnston.

/s/ Michael C. Pruitt
FOREPERSON